



# In the Supreme Court of the United States.

OCTOBER TERM, 1898.

FREDERICH HOENINGHAUS ET AL. }  
v. } No. 341.  
THE UNITED STATES. }

## MOTION TO ADVANCE.

## STATEMENT OF FACTS.

On September 15, 1897, the appellees, constituting the firm of Hoeninghaus & Curtiss, imported into the United States and entered for duty at the port of New York certain silk and cotton piece goods. The collector classified these goods for duty under paragraph 387 of the tariff act of July 24, 1897, and the correctness of his classification is not disputed. The appraiser of the port, upon examination of the merchandise, added francs .09 per meter to make market value. *Upon the liquidation of the entry the collector assessed upon a portion of the merchandise a duty of 60 cents a pound and upon the remainder a duty of 50 cents a pound, under the provisions of paragraph 387.* He also assessed an additional duty by reason of the appraiser's advance under the provisions

of section 7 of the customs administrative act of June 10, 1890, as amended by section 32 of the tariff act of July 24, 1897.

The importers protested against the exaction of this additional duty, claiming (to quote the language of their protest), "that as said merchandise, having regard either to its invoice, entered or appraised value, was not subject to an ad valorem duty, or to a duty based upon or in any manner regulated by the value thereof, but, on the contrary, was subject to specific duties, you had no right to levy any additional duty thereon, under section 7 of the act of June 10, 1890, as amended by section 32 of the act of July 24, 1897." The collector transmitted the protest to the Board of General Appraisers, by whom it was overruled, one of the general appraisers dissenting. The importers thereupon brought the case into the United States circuit court for the southern district of New York on a petition for review, under the provisions of section 15 of the customs administrative act. The circuit court affirmed the decision of the Board of General Appraisers. An appeal was taken by the importers to the United States circuit court of appeals for the second circuit, and that court has certified the questions of law involved for the consideration and decision of this court.

#### STATUTES TO BE CONSTRUED.

Paragraph 387 of the tariff act of July 24th, 1897, provides as follows :

*Woven fabrics in the piece, not especially provided for in this act, weighing not less than one and one-third ounces per square yard and not more than*

eight ounces per square yard, and containing not more than twenty per centum in weight of silk, if in the gum, fifty cents per pound, and if dyed in the piece, sixty cents per pound; if containing more than twenty per centum and not more than thirty per centum in weight of silk, if in the gum, sixty-five cents per pound, and if dyed in the piece, eighty cents per pound; if containing more than thirty per centum and not more than forty-five per centum in weight of silk, if in the gum, ninety cents per pound, and if dyed in the piece, one dollar and ten cents per pound; if dyed in the thread or yarn and containing not more than thirty per centum in weight of silk, if black (except selvedges), seventy-five cents per pound, and if other than black, ninety cents per pound; if containing more than thirty and not more than forty-five per centum in weight of silk, if black (except selvedges), one dollar and ten cents per pound, and if other than black, one dollar and thirty cents per pound; if containing more than forty-five per centum in weight of silk, or if composed wholly of silk, if dyed in the thread or yarn and weighted in the dyeing so as to exceed the original weight of the raw silk, if black (except selvedges), one dollar and fifty cents per pound, and if other than black, two dollars and twenty-five cents per pound; if dyed in the thread or yarn, and the weight is not increased by dyeing beyond the original weight of the raw silk, three dollars per pound; if in the gum, two dollars and fifty cents per pound; if boiled off, or dyed in the piece, or printed, three dollars per pound; if weighing less than one and one-third ounces and more than one-third of an ounce per square yard, if in the gum, or if dyed in the thread or yarn, two and one-half dollars per pound; if weighing less than one and one-third ounces and more than one-third

of an ounce per square yard, if boiled off, three dollars per pound; if dyed or printed in the piece, three dollars and twenty-five cents per pound; if weighing not more than one-third of an ounce per square yard, four dollars and fifty cents per pound; *but in no case shall any of the foregoing fabrics in this paragraph pay a less rate of duty than fifty per centum ad valorem.*

Section 7 of the customs administrative act of June 10, 1890, as amended by section 32 of the tariff act of July 24, 1897, reads as follows:

That the owner, consignee, or agent of any imported merchandise which has been actually purchased may, at the time when he shall make and verify his written entry of such merchandise, but not afterwards, make such addition in the entry to the cost or value given in the invoice or pro forma invoice, or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise the same to the actual market value or wholesale price of such merchandise, at the time of exportation to the United States, in the principal markets of the country from which the same has been imported; but no such addition shall be made upon entry to the invoice value of any imported merchandise obtained otherwise than by actual purchase; and the collector within whose district any merchandise may be imported or entered, whether the same has been actually purchased or procured otherwise than by purchase, shall cause the actual market value or wholesale price of such merchandise to be appraised; *and if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry, there shall be levied, collected,*

*and paid, in addition to the duties imposed by law on such merchandise, an additional duty of one per centum of the total appraised value thereof for each one per centum that such appraised value exceeds the value declared in the entry, but the additional duties shall only apply to the particular article or articles in each invoice that are so undervalued, and shall be limited to fifty per centum of the appraised value of such article or articles. Such additional duties shall not be construed to be penal, and shall not be remitted, nor payment thereof in any way avoided, except in cases arising from a manifest clerical error, nor shall they be refunded in case of exportation of the merchandise, or on any other account, nor shall they be subject to the benefit of drawback:* *Provided,* That if the appraised value of any merchandise shall exceed the value declared in the entry by more than fifty per centum, except when arising from a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs shall seize such merchandise and proceed as in case of forfeiture for violation of the customs laws, and in any legal proceeding that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence. The forfeiture provided for in this section shall apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles in each invoice which are undervalued: *Provided further,* That all additional duties, penalties, or forfeitures applicable to merchandise entered by a duly certified invoice

shall be alike applicable to merchandise entered by a pro forma invoice or statement in the form of an invoice, and no forfeiture or disability of any kind, incurred under the provisions of this section shall be remitted or mitigated by the Secretary of the Treasury. The duty shall not, however, be assessed in any case upon an amount less than the invoice or entered value.

#### THE QUESTION INVOLVED.

The question to be determined by this court upon the certification of the circuit court of appeals for the second circuit is whether, in view of the proviso at the close of paragraph 387, that "in no case shall any of the foregoing fabrics in this paragraph pay a less rate of duty than fifty per centum ad valorem," the silk and cotton piece goods imported by the appellees, which were subject to and upon which there was assessed specific duties of 50 and 60 cents per pound under paragraph 387 (such specific duties being more than 50 per cent of the appraised value), were "merchandise subject to an ad valorem duty, or to a duty based upon or regulated in any manner by the value thereof" within the meaning of section 7 of the customs administrative act of June 10, 1890, as amended by section 32 of the tariff act of July 24, 1897, so as to render them subject to "an additional duty of one per centum of the total appraised value thereof for each one per centum that such appraised value exceeds the value declared in the entry." The United States contends, and the board of appraisers and the circuit court have decided, that the goods were properly subject to such additional duty. The importers contend that the additional duty can not lawfully be assessed.

## REASONS FOR ADVANCEMENT.

This cause is No. 341 upon the present docket, and it is reasonable to assume that, unless the court shall advance it, it can not be heard and decided until the winter of 1899-1900. The question involved is, so I am advised, constantly arising in the liquidation of entries at the port of New York and presumably elsewhere. Protests in large numbers are filed on behalf of numerous importers, raising the same contention as that involved in the present case. A considerable amount of money, the precise figures it is not practicable to state, is involved in the settlement of the question. Frequent reappraisements are occasioned by the Government's interpretation of the law, which would be unnecessary if the importers' contention as to the question certified here should be sustained. The provisions of law to be construed are in present and continuing operation, and an early settlement of the question by this court would simplify the administration of the customs laws, and would certainly expedite the public business by dispensing with the necessity of reappraisements if the importers' contention should be sustained by this court or of the accumulation and handling of protests if the Government's contention should be decided to be correct. A large number of importers are interested in the question and have urged the application for its speedy hearing and decision, and the Treasury Department is of opinion that it would be to the advantage of all concerned to have this question set at rest.

An oral argument of the case is desired, and it is believed it would throw light upon the subject and facilitate and lighten the labors of the court. The question

involved is comparatively simple and would not require lengthy discussion, and it is believed that an hour on each side would be more than ample for its presentation.

For the reasons above stated it is hoped that the court may set the case down for oral argument at an early date. This motion is made with the knowledge and concurrence of the appellees.

JOHN K. RICHARDS,  
*Solicitor-General.*

WASHINGTON, November 11, 1898.

